

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**WESTERN MICHIGAN AREA LOCAL 281,
AMERICAN POSTAL WORKERS UNION, AFL-
CIO (APWU) (UNITED STATES POSTAL
SERVICE)**

Respondent

and

Case 07-CB-134861

SAMUEL J. NAVES, an Individual

Charging Party

**COUNSEL FOR THE GENERAL COUNSEL'S RESPONSE TO
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

On November 12, 2014, Respondent filed a Motion for Summary Judgment in the above entitled matter (Attachment A). Pursuant to Section 102.24 (b) and 102.50 of the Board's Rules and Regulations (Rules), Counsel for the General Counsel opposes this Motion and states the following:

1. The charge in this proceeding was filed by the Charging Party on August 18, 2014. The Complaint and Notice of Hearing (Complaint) issued on October 24, 2014 (Attachment B). Hearing in this matter is scheduled for January 22, 2015.
2. In its Motion, Respondent states that the charge filed by the Charging Party on August 18, 2014 was filed outside of the applicable statute of limitations period in Section 10(b) of the Act (10(b)). The Complaint alleges that on several occasions between about May 2013, until about July 2014, the Charging Party, who is a member of the Unit, orally asked Respondent for information about the status of the grievance pertaining to his January 20, 2013 discharge and

during that period of time, Respondent through its agent Roy Bailey willfully misled the Charging Party about the status of his grievance. (See Complaint paragraphs 10 and 11)

3. Respondent bases its 10(b) argument on the assertion that the Charging Party was told, sixteen months prior to the unfair labor practice charge, that Respondent was not going to move forward with the grievance if he rejected the settlement offer and after he rejected the offer, he was advised the Respondent closed the grievance.¹ Counsel for the General Counsel's complaint alleges that from May 2013 until July 2014 the Charging Party was misled, by Respondent, about the status of his grievance. This is a material issue of fact which is not appropriate for summary judgment, and must be determined at a hearing by an administrative law judge. *Security Walls, LLC*, 361 NLRB No.29, 2014, *citing Conoco Chemicals Co.*, 275 NLRB 39, 40 (1985) (*citing Stephens College*, 260 NLRB 1049, 1050 (1982))

4. Respondent is correct that Section 10(b) of the Act provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." 29 U.S.C. § 160(b). The six-month limitations period accrues from the date that the Charging Party discovered or reasonably should have discovered the act constituting the alleged unfair labor practice. *Concourse Nursing Home*, 328 NLRB 692, 694 (1999). Notice, "whether actual or constructive, must be clear and unequivocal." *Salem Elec. Co., Inc.*, 331 NLRB 1575, 1576 (2000). In this case, the General Counsel alleges that the Charging Party was misled between May and July 2014 about the status of his grievance. (See Complaint paragraphs 10 and 11) Further the General Counsel alleges that Respondent's assertion, that the Charging Party was informed of his grievance status sixteen months prior to filing the unfair labor practice charge, is erroneous.

¹ Respondent attached an affidavit from Clerk Craft Director Roy Bailey to further its assertion. Counsel for the General Counsel asserts that its factual evidence is contrary to the assertion of Respondent. This further demonstrates that there is a genuine issue of material fact and summary judgment is not appropriate.

5. In *Postal Service Marina Center*, 271 NLRB 397 (1984), the Board held that henceforth it would focus on the date of unequivocal notice of an allegedly unlawful act, rather than on the date the act's consequences became effective, in deciding whether the period for filing a charge under Section 10(b) of the Act has expired. However, as the Board emphasized in *Stage Employees IATSE Local 659 (Paramount Pictures)*, 276 NLRB 881 (1985), “*Postal Service Marina Center* ... was limited to unconditional and unequivocal decisions or actions.” Thus, Counsel for the General Counsel asserts that it was not until July 2014, less than two months before the charge was filed, that the Charging Party knew or had reason to know that Respondent had actually dropped the grievance regarding his discharge.

6. The burden of establishing that notice was provided outside the 10(b) period is on the party asserting 10(b). *Patsy Trucking, Inc.*, 297 NLRB 860, 862 (1990). In this case, Respondent did not meet this burden just because it has denied a material fact of the case. This is a credibility issue to be resolved by the administrative law judge at the hearing.

For all the above-stated reasons, Counsel for the General Counsel respectfully submits that Respondent’s Motion for Summary Judgment be denied in its entirety and that the hearing in this matter proceed as scheduled for January 22, 2015.

Dated in Detroit, Michigan, this 19th day of November 2014.

/s/ Kelly Temple
Kelly Temple
Counsel for the General Counsel
National Labor Relations Board
Patrick V. McNamara Federal Building
477 Michigan Avenue — Room 300
Detroit, Michigan 48226-2569
(313) 226-3248

I certify that on the 19th day of November, 2014, I emailed copies of the Counsel for the General Counsel's Response to Respondent's Motion for Summary Judgment to the following parties:

E-File:

Executive Secretary
National Labor Relations Board

By Email:

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REGION SEVEN**

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Case 07-CB-134861

SAMUEL J. NAVES, an Individual

Charging Party

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by the Charging Party. It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., the Postal Reorganization Act, 39 U.S.C. § 101 et seq. (PRA), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Respondent has violated the Act as described below.

1. The charge in this proceeding was filed by the Charging Party on August 18, 2014, and a copy was served on Respondent by U.S. mail on the same date.

2. The United States Postal Service, herein called the Employer, provides postal services for the United States and operates various facilities throughout the United States in the performance of that function, including its facility in Kentwood, Michigan.

3. The Board has jurisdiction over the Employer and this matter by virtue of Section 1209 of the PRA.

4. At all material times, American Postal Workers Union, AFL-CIO, herein called the National Union, and Respondent have each been labor organizations within the meaning of Section 2(5) of the Act.

5. The employees of the Employer described in Article 1 (Union Recognition) of the most recent collective bargaining agreement between Employer and the National Union

described below in paragraph 6 (the Unit), constitute a unit appropriate of the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

6. At all material times, the Employer has recognized the National Union as the exclusive collective bargaining representative of the Unit. This recognition has been embodied in successive collective bargaining agreements, the most recent of which is effective from November 21, 2010 to May 20, 2015.

7. At all material times, based on Section 9(a) of the Act, the National Union has been the exclusive collective bargaining representative of the Unit.

8. At all material times, Respondent has been the designated servicing representative of the National Union for employees in the Unit employed at the Employer's Kentwood, Michigan facility, where the Charging Party worked.

9. At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act):

Amy Puhalski	-	President
Roy Bailey	-	Clerk Craft Director

10. On several occasions between about May 2013 until about July 2014, the Charging Party, who is a member of the Unit, orally asked Respondent for information about the status of the grievance pertaining to his January 20, 2013 discharge.

11. During the period of time described in paragraph 10, Respondent through Roy Bailey willfully misled the Charging Party about the status of his grievance.

12. Respondent's conduct described above in paragraph 11 was perfunctory and arbitrary.

13. By the conduct described above in paragraphs 11 and 12, Respondent has breached its duty of fair representation owed to the Charging Party and Unit employees at the Kentwood, Michigan facility.

14. By the conduct described above in paragraphs 11 and 12, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act.

WHEREFORE, it is prayed that Respondent be ordered to:

1. Cease and desist from engaging in the conduct described above in paragraphs 11 and 12, or in any like or related manner restraining or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action:

Post appropriate notices.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before Friday, November 7, 2014, or postmarked on or before Thursday, November 6, 2014.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **Thursday, January 22, 2014, at 10:00 a.m.** at the Grand Rapids Resident Office in the Gerald R. Ford Federal Building, located at 110 Michigan Street, N.W., Room 299, Grand Rapids, Michigan, and on consecutive days thereafter until

concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: October 24, 2014

/s/ Terry Morgan

Terry Morgan
Regional Director
National Labor Relations Board
Region 07
477 Michigan Ave Rm 300
Detroit, MI 48226-2543

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 07-CB-134861

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Amy Puhalski , President
Western Michigan Area Local 281,
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Martin Hunnicutt , Senior Plant Manager
United States Postal Service
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Grand Rapids, MI 49501-5500

Samuel J. Naves
18 Charles Lane
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Roderick D. Eves , Deputy Managing Counsel
United States Postal Service
(Law Department - NLRB Unit)
1720 Market Street, Room 2400
Saint Louis, MO 63155-9948

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in

evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

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Respondent,

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SAMUEL J. NAVES, an Individual

Charging Party

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to 29 CFR 101.24 and Fed.R.Civ.P 56, Respondent hereby moves for summary judgment in its favor as the charge underlying the complaint is untimely under 29 U.S.C. §160(b) as it was brought more than six months after the basis of the complaint arose.

I. Background Facts

The Charging Party ("Naves") was a non-career PSE Clerk who worked at the U.S. Postal Service's East Paris Post Office when Naves was removed on January 23, 2013 for Failure to Follow Instructions: Scheme Failure. *Exhibit 1 – Notice of Removal*. Respondent grieved the removal. In or about the end of February 2013, Respondent obtained a favorable settlement offer, from the Postmaster to allow Naves to retrain for the scheme on the clock for 2 hours a day and retake the test again. *Exhibit 2 – Confidential Witness Affidavit of Roy Bailey, p. 1, lines 7-10*. The Charging Party wanted backpay, so the Clerk Craft Director went back to the Postmaster with the counter offer: it was rejected. *Id., p. 1, line 13-17*. The Clerk Director then

advised the Charging Party of the Postmaster's rejection of the counter and Naves rejected the settlement offer from the U.S. Postal Service. The Clerk Director advised Naves that there was no merit to move the case forward and that he was not going to move the grievance to step 3. About a week later (in or about late February 2013-early March 2013), the Charging Party called the Clerk Director and stated he wanted the grievance moved forward rather than take the settlement offer. Naves was advised by the Clerk Director that there was no merit and if rejected the offer Naves was tying the Clerk Director's hands. The Clerk Director then advised the Postmaster of the Charging Party's rejection of the settlement and that the case was not going to be moved forward. Even though the Charging Party had been told twice before that his rejection of the offer would lead to dismissal of the grievance, the Clerk Director again advised the Charging Party of the decision not to move the grievance forward. *Id. p. 2, line 1-19.*

Sixteen months later, Naves filed an unfair labor charge alleging "That the union had fraudulent cancelled its decision not to send my grievance to arbitration for my discharge appeal, This was a racially motivated and a discrimination decision." Exhibit 3 – Unfair Labor Charge dated 8/18/14. The sworn affidavit of Mr. Bailey evidences that the Charging Party was informed 3 times during the period of late-February 2013 to early March 2013 that his rejection of the settlement offer would result in the Union not moving the grievance forward. As the Charging Party persisted in his rejection of the settlement offer, the grievance was closed in accordance with the information conveyed to the Charging Party.

II. Law

Section 10(b) of the NLRA, provides in relevant part that, "[N]o complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board and the service of a copy thereof upon the person against whom such

charge is made.” 29 U.S.C. § 160(b). This six-month period for filing an unfair labor practice complaint is a statute of limitations, and is procedural, not jurisdictional. *See NLRB v. St. Francis Healthcare Centre*, 212 F.3d 945, 967 (6th Cir. 2000). The six-month limitations period accrues from the date that the plaintiff discovered or reasonably should have discovered the act constituting the alleged unfair labor practice. *See, e.g., Nida v. Plant Protection Ass’n Nat.*, 7 F.3d 522, 525 (6th Cir.1993). Section 10(b) is intended to, “[b]ar litigation over past events after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused, and of course to stabilize existing bargaining relationships.” *Local Lodge No. 1424 v. NLRB*, 362 U.S. 411, 419 (1960) (internal citation and quotations omitted).

It is clear from the supporting evidence attached to this Motion that the Charging Party filed his complaint 16 months after he had been told in three separate conversations with the Clerk Director that Respondent was not going to move the grievance forward if he rejected the settlement offer and after he was advised the union closed the grievance. There is no merit to the assertion that Respondent did not keep him informed of the status of the grievance. He was told what would happen if he rejected the settlement offer: it would be closed. There is no evidence of wrong doing, fraud or discrimination by the Respondent. In fact, the union obtained a very favorable settlement that the Charging Party rejected knowing that the union would not move the grievance forward based on his rejection.

For the foregoing reasons, the untimely Charge must be dismissed.

Respectfully submitted,

WHEELER UPHAM, P.C.

Dated: November 12, 2014

By



Glenn L. Smith (P43156)
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Grand Rapids, MI 49503
(616) 459-7100
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CERTIFICATE OF SERVICE

The electronically filed Respondent's Motion For Summary Judgment is being served on the following individuals in accordance with the service requirements of Section 102.114(i) of the Board's Rules and Regulations by serving the party by electronic mail (email). If the other party does not have the ability to receive electronic service, the other party will be notified by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service no later than the next day, by overnight delivery service, or, with the permission of the party receiving the document, by facsimile transmission.

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Pontiac MI 48341
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Roderick D. Eves, Deputy Managing Counsel
U.S. Postal Service Law Dept – NLRB Unit
1720 Market Street, Room 2400
Saint Louis MO 63155-9948
Roderick.D.Eves@usps.gov

Dated: November 12, 2014

By



Glenn L. Smith

cc: Amy Puhalski, President
Western Michigan Area Local 281
APWU, AFL-CIO
PO Box 2706
Grand Rapids MI 49501-2706



UNITED STATES
POSTAL SERVICE

DATE: January 23, 2013

SUBJECT: Notice of Removal

TO: Name: Sam Naves
Title: PSE Clerk
EIN: 0417899
Location: Eat Paris Post Office
Grand Rapids MI 49512

You are hereby notified that you will be removed from the Postal Service no later than (30) days from the date you receive this notice. The reason(s) for this notice is:

The reason for this action: **Failure to Follow Instructions: Scheme Failure**

Specifically: In your PSE Clerk position you were assigned a city/local scheme. You were provided written notification that you were assigned to cast scheme training zone 49456. The letter informed you that this scheme contained 695 items and that you are allowed is 43 hours and 28 minutes to study these items.

You began your training on June 18, 2012. You acknowledged understanding the written and verbal instructions regarding the training process that was provided during orientation when you initialed the orientation form. You were informed and were aware that your employment was contingent upon your completing and qualifying the scheme training

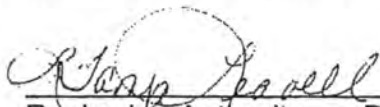
During orientation you were instructed to initial after you completed each pre-test. You took the first test on November 2, 2012 with a score of 44% and initialed as instructed. You took the second pre-test on November 28, 2012 obtaining a score of 46%. This time you refused to initial as instructed. You were instructed to report on November 29, 2012, the next day, to take your final test. You failed to follow this instruction. You did not report to take your final test until December 6, 2012.

You completed your allotted training hours from June 18, 2012 until November 28, 2012. The score of 95% is required for passing and qualification, On December you took your final test your score was 50% which is not passing.

You were interviewed on January 10, 2013, you provided no acceptable explanation.

You have the right to file a grievance under the Grievance-Arbitration procedure set forth in Article 15, Section 2 of the National Agreement within fourteen (14) days of your receipt of this notice.


Supervisor _____
Date 1/24/13


Reviewing Authority _____
Date 1/24/13

Mailed Priority Delivery Confirmation and regular mail on: _____

Delivery Confirmation # _____

cc: Postmaster
Local Services
O.P.F.

Sam Naves
04178999
DISC



County of Kent
SS
State of Michigan

CONFIDENTIAL WITNESS AFFIDAVIT

I, Roy Bailey, being first duly sworn upon my oath, hereby state as follows: I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

My address is 2511 Lawncrest Drive NE, Grand Rapids, 49505. My telephone number is 616-304-8908. I am employed by USPS, located at 1765 3 Mile, Grand Rapids, MI.

1 I have worked for the USPS for 22 years. Currently, I work as a distribution clerk.

2 From 2011 to 2013 I served as the Clerk Craft Director for the APWU, Western
3 Michigan Area Local.

4 In late 2012, I learned that Sam Naves received a 30 day notice of removal. A
5 step one grievance was filed and it then moved to the step two process.

6 In about the end of February 2013, I set up a meeting with Theresa Mullins, the
7 postmaster, and she was doing the step two meetings. I met with her on Naves'
8 grievance. We talked about the lack of training. Ultimately, the USPS would
9 offer to settle the grievance for no back pay but for 30 days of two hours on the
10 clock to learn the scheme. I had reviewed Naves' training records prior to the
11 meeting and I was concerned that Naves had not been attending the training as
12 he should.

13 After this meeting, I called Sam. I told him that he was not going to get any
14 backpay. He wanted 2 hours of pay for each day that he was due from the date
15 he was let go to the date of when he returned for training.

16 I went back to the postmaster with the counter offer. She said no and stuck with
17 her proposal.



h

1 I called Sam and told him that she would not move off it and that he should take
2 the offer of two hours a day, learn the scheme and return to work. Sam rejected
3 the offer. I said there was no merit for me to move the case and that you had
4 failed the scheme and that he had been removed for just cause. I said we didn't
5 have anything to stand on. I said that I wasn't going to move it to step three and
6 waste their time. He told me to move the grievance. I said that it was my opinion
7 as the Clerk Craft Director that I wasn't going to move the grievance. I said that
8 in my 19 years and with this being a new title (PSE) in the postal service and that
9 the removal was for just cause. I told him to give it some thought on coming
10 back for 30 days.

11 About a week later, Naves called me and said that he wanted me to move the
12 grievance forward. I said there was no merit and once you declined the 30 day
13 offer you tied my hands that I would have to say that they had made an offer.
14 Thereafter, I called Mullins to meet with her that Naves had declined the offer
15 and that the case was closed as it was not be moved forward.

16 It is my practice to inform the grievants that their grievance was being dropped.
17 We did it on the phone because Naves was living on the other side of the state at
18 the time. Sometimes I would inform grievants in person, but given the potential
19 cost in this case, I did it over the phone.

20 At the step two grievance, it is the Union's responsibility to resolve them and the
21 decision to process the grievance is ultimately made by the Clerk Craft director.
22 Of the other PSE's that had also failed to pass the scheme, none of their
23 grievances have been moved beyond the second step due to the Union's inability
24 to prevail under the contract language.

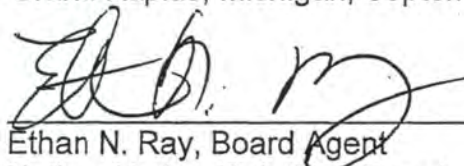
I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make any changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this statement consisting of 3 pages, including this page, I fully understand its contents, and I certify that it is true and correct to the best of my knowledge and belief.



Roy Bailey

Subscribed and Sworn To Before me at
Grand Rapids, Michigan, September 24, 2014.



Ethan N. Ray, Board Agent
National Labor Relations Board

INTERNET
FORM NLRB-508
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case

Date Filed

07-CB-134861

August 18, 2014

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name
Amy PuhlskiWestern Michigan Area
Local 281, APWU

b. Union Representative to contact

Amy Puhlski
225 Michigan
Grand Rapids MI 49503

c. Address (Street, city, state, and ZIP code)

225 Michigan
Grand Rapids MI 49503

d. Tel. No.

e. Cell No.

616-822-3678

f. Fax No.

g. e-Mail

h. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) (1) (A) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

On or about July 10 2014, I learned from a FOIA request from Amy Puhlski President of the Post Union (crafts and Clerks) That the union had fraudulently cancelled its decision not to send my grievance to arbitration for my discharge appeal. This was a racially motivated and a discrimination decision.

3. Name of Employer
US Post Service

4a. Tel. No.

b. Cell No.

c. Fax No.

d. e-Mail

5. Location of plant involved (street, city, state and ZIP code)

225 Michigan
Grand Rapids MI 49503

6. Employer representative to contact

Amy Puhlski
616-822-3678

7. Type of establishment (factory, mine, wholesaler, etc.)

Government

8. Identify principal product or service

Mail

9. Number of workers employed

500 +

10. Full name of party filing charge
Samuel J Naves

11a. Tel. No.

b. Cell No.

616-308-7151

c. Fax No.

d. e-Mail

sjnaves1958@yahoo.com

11. Address of party filing charge (street, city, state and ZIP code.)

18 Charles Lane
Pontiac MI 48341

12. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By

(signature of representative or person making charge)

(Print name and title or office, if any)

Tel. No.

Cell No.

616-308-7151

Fax No.

e-Mail

18 Charles Lane

Address Pontiac MI 48341

(date) 8/18/14 SJ Naves 1958@yahoo.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT

tabbies

2014 AUG 18 AM 10:58
RECEIVED
NLRB
REGIONAL OFFICE
GRAND RAPIDS, MI